IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

CRP.No. 346 of 2000(H)

(AA.1/1996 OF APPELLATE AUTHORITY (LR),THRISSUR IN S.M. NO. 200 OF 1992 OF LAND TRIBUNAL, KOLLENGODE.)

REVN. PETITIONER/APPELLANT/APPLICANT:

K.P. BLAN, S/O. PONNAN,
KUMBALAMKODE,
ELAVANCHERRY VILLAGE, CHITTOOR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENTS/RESPONDENTS/RESPONDENTS:
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1. K.P. VELAYUDHAN, S/O. PONNAN,
KUMBALAMKODE,
ELAVANCHERRY VILLAGE, CHITTOOR TALUK,
PALAKKAD DISTRICT.

2. RECEIVER ITTUNNI RAJA KUTTIANUJAN,
THIRUVANJIRA PALACE,
KALLAI ROAD, KOZHIKODE.

3. STATE OF KERALA REPRESENTED BY CHIEF SECRETARY,
THIRUVANATHAPURAM.

BY GOVERNMENT PLEADER SMT. SMITHA BABU.
R1 BY ADV. SRI.T.M.CHANDRAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.No. 691 OF 2000 IN C.R.P. NO. 346 OF 2000

DISPOSED OF.

20.08.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 346 OF 2000

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Dated this the 22nd August , 2007

O R D E R

The revision petitioner is not a party in S.M.No.200 of 1992 on the file of the Land Tribunal, Kollengode. Suo motu proceedings were initiated before the Land Tribunal showing the 1st respondent Velayudhan as a cultivating tenant. The Land Tribunal passed the order dated 31.08.1992 holding that Velayudhan is a cultivating tenant in respect of 10.89 acres of land . Revision Petitioner, Balan challenged that order in A.A. No.1 of 1996 on the file of the Appellate Authority (Land Reforms), Thrissur. There was delay in filing the appeal, which was condoned by the Appellate Authority . The Appeal was considered on the merits by the Appellate Authority and it was dismissed.

2. The contentions raised by the revision petitioner before the Appellate Authority are the following:

i) An extent of 50 cents in Sy.No.38/1,2,5 belonged to Ponnan, the father of the Revision Petitioner and the first respondent Velayudhan as per document No.1191/1945. Ponnan assigned his rights in favour of Meenkashi, wife of the revision petitioner as per document No. 1078 of 1949. Thereafter on 27.02.1972, Meenakshi assigned the property in favour of her daughters, Santha and Radha . The jenmi of the property is Peringottukavu Devaswom

represented by Elayaraja Samoodiri . As on 01.01.1970, Meenakshi was in possession of the property.

ii) An extent of 71 cents of land in Sy.No.39/4,5, which is the house and compound belong to the revision petitioner and the first respondent Velayudhan. The house was constructed by Ponnan, the father of the revision petitioner and the first respondent. This item of property was acquired by Ponnan by Kanam assignment deed No.1191/45. On the death of Ponnan, the property devolved upon the revision petitioner, the first respondent and others.

iii) An extent of 1 acre 10 cents in Sy.No. 39/3 and 7 is a rice mill and its compound. That property was purchased by the revision petitioner as per jenmam assignment deed No. 468/1955 of S.R.O., Kollengode. The first respondent has no manner of right over the said land

3. The sum and substance of the contentions raised by the revision petitioner is that in respect of the above three items of land, the first respondent has no exclusive rights. Some of the items are held by him as co-owner , while in respect of some others, he has no right at all. The Appellate Authority though has passed a judgment running to 10 pages, has not considered the title in respect of the property and on whom, the title vests. The Appellate Authority was carried away by the report of the authorised officer, which shows that the first respondent was in possession of the property . The Appellate Authority also erroneously thought that under the Kerala Land Reforms Act, “the possesison

right is highly important." It is true that a person should be a cultivating tenant to claim right to assignment under the Kerala Land Reforms Act. This applies equally to the revision petitioner and the first respondent. What lease hold right the first respondent has, is not seen discussed in the order of the Land Tribunal or in the judgment of the Appellate Authority. If the first respondent is only a co-owner in respect of some of the items, the purchase certificate can be issued in his favour making it clear that it would enure to the benefit of all co-owners, or else, purchase certificate can be issued in the name of all co-owners after issuing notice to them. In respect of the land which stood in the name of Ponnan, the father of the revision petitioner and the first respondent, the tenancy claim by the first respondent could be granted only if he proves that he is a cultivating tenant as per a lease validly granted in his favour. The Land Tribunal as well as the Appellate Authority has not adverted to this aspect of the matter at all. There is no finding as to how the first respondent got the lease hold right or how he acquired the possession of the property, or on what right the first respondent was entitled to fixity of tenure and the right to purchase the right of landlords and intermediaries, if any. In short, both the authorities have not considered the real questions to be considered in a proceedings under section 72C of the Land Reforms Act for assignment of the right, title and interest of the landlord and intermediaries in favour of a person who claims to be a cultivating tenant.

4. Reference is made to Ceiling Proceedings where the petitioner and the first respondent were declarants. There is also a reference to an order in C.R.P. No. 1450 of 1981 and the judgment of the Supreme Court in Civil Appeal No. 3119 of 1992. (It is submitted by the counsel for the respondent that the number of the Revision is C.R.P. 1409 of 1981). It would appear that two Ceiling Proceedings were initiated showing the revision petitioner as a declarant in one and the first respondent as a declarant in the other. From the documents available on record, it is not clear, whether the inter se dispute between the petitioner and the first respondent was decided or whether in order to dispose of the Ceiling case resolution of the disputes between these two parties was absolutely essential. The inclusion or non-inclusion of certain lands in the Ceiling Proceedings would not finally conclude the rights of the parties, when it comes to the question of tenancy right unless there are findings which would operate as res judicata. On the basis of the documents produced, it can be seen that Ponnan had rights in respect of some of the items . The contention of the first respondent is that Ponnan had only Kanam rights . If so, Ponnan would be in the position of an intermediary. Ponnan is no more . Therefore, his legal representatives including the revision petitioner would be intermediaries. If so, the revision petitioner should have been made a party to the proceedings before the Land Tribunal. The Land Tribunal did not issue notice to the revision petitioner nor did the first respondent raise a contention that Ponnan

had any intermediary rights.

5. The question whether Ponnan had only intermediary rights or whether he was a cultivating tenant of the property is a matter to be decided on evidence. It is also to be decided on evidence whether the exclusive rights claimed by the first respondent is genuine or not. The manner in which the first respondent acquired lease hold right or any other right to possess land as a cultivating tenant is a matter to be proved by him. The Land Tribunal as well as the Appellate Authority have not considered at all the question whether the first respondent has proved the tenancy right. On the basis of the materials on record, it is not possible to decide as to whether the first respondent is the cultivating tenant or not or whether the revision petitioner has also fractional interest in the lease hold rights . Documentary and oral evidence would be necessary to decide the dispute. Since the revision petitioner was not made a party to the proceedings before the Land Tribunal, in my view, the Appellate Authority should have remanded the matter to the Land Tribunal for fresh decision after affording an opportunity to the parties to put forward their contentions, to produce documents and to adduce evidence. Instead of doing so, the Appellate Authority ventured to arrive at a conclusion on scanty materials and on insufficient data. Even then, the Appellate Authority did not address itself to the question whether the first respondent has proved that he is the cultivating tenant. On the other hand, the Appellate Authority picked holes in the case of

the revision petitioner and relied on the report of the authorised officer to hold against the revision petitioner. To my mind, the Appellate Authority was not justified in deciding the matter conclusively without affording an opportunity to the revision petitioner to produce documents and to adduce evidence. Inspection of the property by an authorised officer may also be necessary.

6. For the aforesaid reasons, the Civil Revision Petition is allowed. The order passed by the Land Tribunal and the judgment of the Appellate Authority are set aside and the matter is remanded to the Land Tribunal for fresh disposal. The revision petitioner shall be impleaded as additional respondent in S.M.No. 200 of 1992. The Land Tribunal shall afford an opportunity to the parties to put forward their respective contentions by way of pleadings. They shall be afforded an opportunity to produce documents and to adduce evidence. All the contentions of the parties are left open to be decided by the Land Tribunal. The Land Tribunal shall also consider the effect of the orders passed in the Ceiling cases. From the contentions raised by the Revision Petitioner, it is seen that his daughter Santha and Radha have title to one of the items. The Land Tribunal shall permit Santha and Radha to be impleaded as additional respondents, if they make an application in that behalf. It is made clear that the remand to the Land Tribunal is confined to the properties mentioned in paragraph 2 above and the order of the Land Tribunal in respect of other items is not being disturbed by allowing this Civil Revision Petition. The Land

Tribunal shall dispose of the case on the merits after considering all the relevant facts and circumstances of the case and the evidence adduced by the parties. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 346 OF 2000

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Dated this the 20th August, 2007

O R D E R